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VERIZON
PATENT MANAGEMENT GROUP
1320 North Court House Road
9th Floor
ARLINGTON, VA 22201-2909

EXAMINER
SEFCHECK, GREGORY B

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte STEVEN R. DONOVAN and JOHN K. GALLANT

_____

Appeal 2009-004872
Application 09/436,796
Technology Center 2600

_____

Decided: October 30, 2009

_____

Before MAHSHID D. SAADAT, CARLA M. KRIVAK, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges.*

BAUMEISTER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-10 and 13-28. Claims 11 and 12 have been indicated as containing allowable subject matter (Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' invention relates to:

> A method and system for dynamically selecting a destination gateway to complete a call over a path supported at least in part by an IP telephony network and a public switched telephone network. The method and system further provide for dynamically detecting available gateways, dynamically removing failed and/or unavailable gateways, and automatically recovering failed and/or unavailable gateways after a predetermined period of time. A method is also provided for detecting available destination gateways using a ping method, where a message is transmitted to a plurality of destination gateways on a one-by-one basis to ascertain the availability status of each destination gateway.

(Abstract).

Independent claim 1 is illustrative.[1] It reads as follows:

1.   A method for routing calls to a destination gateway to establish a communication session call in a telecommunications network between a source user agent and a destination user agent over a path supported at least in part by a telephone network and an IP network, said IP network including a plurality of ingress and destination gateways, at least one proxy server, and at least one redirect server (RS), said method comprising the steps of:

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[1] Appellants argue claims 1, 5-7, 24, and 25 together as one group (*see* Br. 8-13); claims 16, 27, and 28 together as a separate group (*see* Br. 16-20); and claims 19 and 22 together as a separate group (*see* Br. 21-24). Accordingly, we select independent claims 1, 16, and 19 as representative of these respective claim groups. *See* 37 C.F.R. § 41.37(c)(1)(vii).

a) receiving a call setup request at the at least one proxy server from the source user agent, wherein the source user agent is included in a public switched telephone network and the call set up request identifies the destination user agent;

b) forwarding the received call setup request to the redirect server;

c) receiving routing information or a request failure response from the redirect server;

d) proxying the call setup request by the at least one proxy server to a destination gateway selected from said routing information upon receiving the routing information from the redirect server, wherein the selected destination gateway can communicate with a public switched telephone network that includes the destination user agent;

e) upon proxying the call setup request to the selected destination gateway, waiting for a response from the selected destination gateway;

f) upon receiving the response from the selected destination gateway within a predetermined time, establishing a communication session using said selected destination gateway; and

g) if the response is not received within the predetermined time, sending the call setup request to a succeeding destination gateway selected from the routing information and reporting failure of the selected destination gateway to the redirect server, wherein the succeeding destination gateway can communicate with a public switched telephone network that includes the destination user agent.

The Examiner relies on the following prior art references to show unpatentability:

White	US 6,069,890	May 30, 2000 (filed June 26, 1996)
Thomas	US 6,487,283 B2	Nov. 26, 2002 (filed Aug. 4, 1998)
Iwama	US 6,600,735 B1	July 29, 2003 (filed Mar. 1, 1999)

Claims 1, 2, 5-7, 15-17, 19, 20, and 22-28 stand rejected under 35 U.S.C. § 103(a) as obvious over White in view of Thomas.

Claims 3, 4, 8-10, 13, 14, 18, and 21 stand rejected under 35 U.S.C. § 103(a) as obvious over White in view of Thomas and further in view of Iwama.

ARGUMENTS AND ISSUES

Rather than repeat the arguments of Appellants or the Examiner verbatim, we refer to the Brief and the Answer for their respective details.[2] In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

I.   Appellants assert that the redirect server recited in claim 1 does not read on White's Internet address database 112[3] (Br. 8-9). The Examiner conversely finds that the claimed redirect server reads on White's Internet address database table because White's Internet address table performs all of the defining functions of a redirect server as claimed (Ans. 10).

The first issue before us, then, is: Have Appellants shown that the Examiner erred in interpreting the claimed redirect server as reading on White's Internet address database?

II.   Appellants further assert that, assuming *arguendo* the Internet address database were to constitute a redirect server, "White does not disclose forwarding a received call setup request to Internet address table 112" (Br. 9). Rather, the "Internet address table 112 of White is merely a database that

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[2] Throughout this opinion we refer to (1) the Appeal Brief (Br.) filed Oct. 14, 2005; and (2) the Examiner's Answer (Ans.) mailed Jan. 12, 2006.
[3] The Internet address database 112 is also referred to as a "database table" (e.g., White, col. 2, ll. 33-34).

is queried to obtain an Internet address associated with a destination gateway" (*id.*).

The second issue before us, then, is: Have Appellants shown that the Examiner erred in interpreting the claimed step of "forwarding the received call setup request to the redirect server" as reading on a gateway router querying an address database to obtain an Internet address for a destination gateway?

III.   Claim 1 recites "if the response [from the selected destination gateway] is not received within the predetermined time, sending the call setup request to a succeeding destination gateway selected from the routing information . . . ." The Examiner finds that this limitation reads on the portion of Thomas disclosing "that the source gateway 'works through' the list of gateways until the call is established" (Ans. 11). The Examiner's reasoning is that Thomas's call setup request will inherently be sent to a succeeding gateway in the prioritized list if a response from the current gateway "does not result in the establishment of the call within a predetermined time" (*id.*), or more specifically, "when the preferred destination gateway is unexpectedly unavailable or fails" (Ans. 12). "The prioritized list of Thomas would serve no purpose if the source gateway was configured to wait indefinitely for a response from a selected destination gateway before moving on [to] the next destination gateway on the list" (Ans. 11).

Appellants argue that even if Thomas does teach working through a prioritized gateway list when "a connection cannot be established after a predetermined time <u>or</u> after a reported failure" (Br. 12), Thomas still does not inherently disclose or suggest, if a response from a selected destination

gateway is not received *within a predetermined time*, sending a call setup request to a succeeding destination gateway selected from routing information received from a redirect server, as required by claim 1 (Br. 12-13). Summarizing Appellants' argument, the Examiner admits that the source gateway could potentially work through the prioritized list of destination gateways in either of two situations: (1) if connection cannot be established after a predetermined time, but also (2) after a reported failure; so one cannot conclude that Thomas's system necessarily works through the list based only upon the first situation (*see* Br. 10-13).

The third issue before us, then, is: Have Appellants shown that the Examiner erred in finding that Thomas teaches or suggests that, if a response from a selected destination gateway is not received within a predetermined time, the proxy server sends a call setup request to a succeeding destination gateway selected from routing information received from a redirect server, as required by claim 1?

IV.   Appellants argue that the Examiner's motivation to combine White and Thomas does not satisfy the requirements of 35 U.S.C. § 103 (Br. 13). More specifically, Appellants assert that "[the Examiner's] motivation statement is merely a conclusory statement providing an alleged benefit of the combination. No portion of either reference is pointed to as providing objective motivation for combining White and Thomas" (*id.*). Rather, the "Examiner's approach to the ultimate legal conclusion of obviousness . . . amounts to a retrospective assessment as to how the claimed invention works and then combining unrelated references to arrive at the claimed invention" (*id.*).

The fourth issue before us, then, is: Have Appellants shown that the Examiner's motivation to combine the prior art is based upon impermissible hindsight?

V.   Independent claim 16 is directed towards "[a] system for allowing a call to be completed in a communication session between a calling party and a called party" and recites *inter alia*, "a network management system for receiving and storing status changes of destination gateways, said network management system being in communication with said IP telephony proxy server" (claim 16).

The Examiner interprets the clearinghouse 50 of Thomas as reading on the claimed network management system (Ans. 13-14). More specifically, the Examiner states, "Thomas discloses that the prioritized list of eligible destination gateways may be created with regards to preference criteria. Thomas shows that the preference criteria includes 'historical availability' of the gateways in the network (Col. 9, lines 18-23 and Col. 10, lines 33-39)" (Ans. 14).

> Appellants acknowledge that
>
> Thomas further discloses that a routing engine 110 associated with clearinghouse 50 may use preference information to provide originating gateway 108 with a prioritized list of terminating gateways 114a-c capable of terminating a call and that the list may be prioritized according to preferences selected by the customer (Thomas – col. 23, lines 21-36).

(Br. 19). Still, Appellants argue that clearinghouse 50 cannot read on the network management system because "Thomas do[es] not disclose or suggest that clearinghouse 50 receives and <u>stores status changes of destination gateways</u>, as required by claim 16" (*id.*).

The fifth issue before us, then, is: Have Appellants shown that the Examiner erred in finding that Thomas teaches or suggests a network management system for receiving and storing status changes of destination gateways, said network management system being in communication with an IP telephony proxy server?

VI.   Claim 17 depends from claim 16 and further recites "wherein the IP telephony proxy server is a Session Initiation Protocol (SIP) proxy server" (claim 17). The Examiner (1) admits that "White does not explicitly disclose a proxy server comprising a SIP proxy server;" (2) takes Official Notice that it was common practice in the art to use SIP protocols for establishing voice over IP calls between different domains; and (3) concludes that one of ordinary skill would have been motivated to specifically use a SIP proxy server for the proxy server disclosed by White because a SIP proxy server is an industry-standard protocol for establishing voice over IP calls (Ans. 7).

Appellants, in turn, (1) "agree that SIP can be used in establishing calls over the Internet"; (2) note that the Examiner's rationale requires modifying White's gateway router 104 to be a SIP proxy server; and (3) argue, "[c]learly, gateway router 104 is not a SIP proxy server and there is also no suggestion or motivation for modifying gateway router 104 into a SIP proxy server, absent impermissible hindsight" (Br. 20).

The sixth issue before us, then, is: Have Appellants shown that the Examiner erred in finding that it would have been obvious to have specifically used a SIP proxy server for White's gateway router 104?

VII.   Claim 18 depends from system claim 16 and further sets forth, "wherein the IP telephony proxy server is an H.323 gatekeeper" (claim 18).

The Examiner relies on Iwama for teaching this feature (Ans. 9, 15).

Appellants argue that the Examiner has not established a prima facie case

because the Examiner does not point to any portion of Iwama for support for

this feature (Br. 26).

The seventh issue before us, then, is: Have Appellants shown that the

Examiner erred in finding that Iwama discloses an H.323 gatekeeper?

FINDINGS OF FACT

The record supports the following Findings of Fact (FF) by a

preponderance of the evidence:

1.   The obviousness rejection of claim 1, 2, 5-7, 15-17, 19, 20, and 22-28

includes the following statement in relation to at least claim 1:

> It would have been obvious to one of ordinary skill in the
> art at the time of the invention to modify the system and
> method of White by providing a prioritized list of eligible
> destination gateways for establishing a call between a source
> and a particular destination based on tracked status information
> of the destination gateways, as taught by Thomas, thus
> increasing the success rate of completing the call if the optimal
> destination gateway is unavailable and also enabling routing
> options based on availability and pricing.

(Ans. 6).

2.   In relation to claims 7 and 17, the Examiner states:

> The Examiner takes Official Notice that it has been
> common practice in the art to utilize session initiation protocol
> (SIP) and other similar internetworking protocols, such as
> H.323, for establishing voice over IP calls between different
> domains (claim[s] 7, 17 – proxy server comprises a SIP proxy
> server).
>
> It would have been obvious to one of ordinary skill in the
> art at the time of the invention to modify the method and

system of White by utilizing a SIP proxy server, which, is an industry-standard protocol for establishing voice over IP calls between different domains, thereby providing the method and system of White with compatibility and address translation between the source and destination PSTNs and the Internet domain.

(Ans. 7-8).

3.   Iwama states: "In the following description [of Iwama's invention], the Internet telephone using the gateway device (102) is based on the procedure of H.323 of ITU-T, but the present invention is likewise applicable even if other protocol procedures such as MGCP, SIP, etc. of IETF are used" (Iwama, col. 7, ll. 45-49).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966) (noting that 35 U.S.C. § 103 leads to three basic factual inquiries: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art). If the claimed subject matter cannot be fairly characterized as involving "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement," a holding of obviousness can be based on a showing that "there was an apparent reason to combine the known elements in the fashion claimed." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417-18 (2007). Such a showing requires,

"some articulated reasoning with some rational underpinning to
support the legal conclusion of obviousness" . . . . [H]owever,
the analysis need not seek out precise teachings directed to the
specific subject matter of the challenged claim, for a court can
take account of the inferences and creative steps that a person
of ordinary skill in the art would employ.

KSR, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir.
2006)).

If the Examiner's burden is met, the burden then shifts to Appellants
to overcome the prima facie case with argument and/or evidence.
Obviousness is then determined on the basis of the evidence as a whole and
the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d
1443, 1445 (Fed. Cir. 1992).

Although the claims are interpreted in light of the specification,
limitations from the specification are not read into the claims. *In re Van
Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

Claims 1, 2, 5-7, 15, 19, 20, and 22-26

I.

We first address the question: Have Appellants shown that the
Examiner erred in interpreting the claimed redirect server as reading on
White's Internet address database? "Before considering the rejections . . . ,
we must first [determine the scope of] the claims . . . ." *In re Geerdes*, 491
F.2d 1260, 1262 (CCPA 1974). We therefore first interpret the meaning of
the term "redirect server," bearing in mind that, during examination, the
claims must be interpreted as broadly as their terms reasonably allow. *In re
Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004).

Appellants assert that White's Internet address database 112 "cannot be fairly construed as being equivalent to a redirect server based on the normal meaning of this term in the art and consistent with the use of this term throughout Appellants' specification" (Br. 9). Appellants further assert that:

> A redirect server, as discussed in Appellants' specification at, for example, pages 4-5, and as known to those of ordinary skill in this art, is a server that receives, *for example*, session initiation protocol (SIP) requests from another device, *such as* SPS proxy server 106 (See Appellants' Fig. 1). Internet address table 112 of White, as discussed above, does not receive any call setup requests, as required by claim 1. In contrast, Internet address table 112 of White is merely a table that is queried by gateway router 104 to obtain an address of the destination gateway router.

(*id.* (emphases added)).

We understand this statement to be an acknowledgement by Appellants that a redirect server may be server that (1) receives requests other than SIP requests, and (2) receives requests from devices other than SPS proxy servers. That is, the portion of the Specification cited by Appellants sets forth a non-limiting example of a redirect server; it does not set forth a definition for the term "redirect server." Furthermore, we find no definition for "redirect server" anywhere in the Specification. Moreover, Appellants have not pointed to any additional evidence of record to support their conclusory statement that those of ordinary skill in the art would understand a "redirect server" to be somehow structurally limited beyond the functionality claimed. Restated, Appellants provide no evidence that White's address database or table 112 cannot be reasonably interpreted as constituting a redirect server.

II.

The second issue before us is: Have Appellants shown that the Examiner erred in interpreting the claimed step of "forwarding the received call setup request to the redirect server" as reading on a gateway router querying an address database to obtain an Internet address for a destination gateway? Similar to our reasoning set forth in the previous section, we note that the Specification provides no express definition for the term "setup request" or for the step of "forwarding the . . . setup request." As such, Appellants have not shown that the Examiner erred in interpreting the claimed step of "forwarding the received call setup request to the redirect server" as reading on a gateway router querying an address database to obtain an Internet address for a destination gateway.

III.

The third issue before us is: Have Appellants shown that the Examiner erred in finding that Thomas teaches or suggests that, if a response from a selected destination gateway is not received within a predetermined time, the proxy server sends a call setup request to a succeeding destination gateway selected from routing information received from a redirect server, as required by claim 1? While we acknowledge Appellants' argument that the Examiner improperly relied on the inherency doctrine to reach the conclusion of obviousness, we still agree with the Examiner, though, that Thomas does render this limitation obvious.

Notwithstanding the Examiner's express invocation of the inherency doctrine, we understand the Examiner's intended position to actually be that one of ordinary skill in the art would reasonably infer from Thomas the possibility of working through a priority list based specifically upon not

receiving a response within a predetermined time (*see* Ans. 13 (stating, in relation to what Thomas's source gateway inherently includes, "it is necessary to interpret the system and method of Thomas by the standards generally accepted in the art")). We find the Examiner's position to be reasonable. *See KSR*, 550 U.S. at 418 (noting that "a court can take account of the inferences . . . that a person of ordinary skill in the art would employ"); *see also In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (noting that "in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom" (citation omitted)).

One of ordinary skill in the art understands that reasons for calls not being established include: (1) the line is busy (a failure to connect is reported), and (2) nobody answers the phone within a reasonable period of time ("the response is not received within the predetermined time" as recited in claim 1). Furthermore, one of ordinary skill in the art knows that if a party doesn't answer a phone call, depending upon the specific situation, one could (1) try reaching that party at a different telephone number listed for that party; or (2) try reaching a different party at a different telephone number listed for the same company or service sought (sending a call setup request to a succeeding destination selected from routing information). *See KSR*, 550 U.S. at 421 (noting that a factfinder's recourse to common sense is permissible in making determinations of obviousness). Moreover, Appellants do not dispute whether one of ordinary skill in the art would reasonably infer such a possibility from the express teachings of Thomas.

Claim 2 depends from claim 1 and further recites "repeating steps (d) to (g) until a destination gateway is determined to be available for establishing said communication session or until all destination gateways from said routing information have been determined to be unavailable" (claim 2). Appellants argue that the Examiner has not explained where Thomas teaches repeating steps (d) to (g), and that, in fact, Thomas does not disclose or suggest this feature (Br. 14).

We understand the Examiner's position to be that Thomas's "working through" the priority list of gateways is synonymous with the language of claim 2, "repeating steps (d) to (g)" (*see* Ans. 11 (noting, "[t]he prioritized list of Thomas would serve no purpose if the source gateway was configured to wait indefinitely for a response from a selected destination gateway before moving on [to] the next destination gateway on the list")). For this reason and the reasons set forth above in relation to the Examiner's other "inherency" arguments, we find the Examiner's position to be reasonable.

Claim 15 depends from claim 1 and recites "further comprising the step of resending the call setup request to the selected destination gateway a predetermined number of times when the response is not received within the predetermined time" (claim 15). Appellants argue that the Examiner has not explained where Thomas teaches this resending a call setup request, and that in fact, neither White nor Thomas discloses this feature (Br. 15). The Examiner, though, has explained the rationale to be:

> As shown above, the disclosure of Thomas illustrates that working through the prioritized list of eligible destination gateways by the source gateway inherently includes sending the call setup request to a succeeding destination gateway if no response is received within a predetermined time, since the possibility of a non-response from a selected destination

> gateway is the reason for having a list of eligible gateways in the first place. Continuing from that aspect, it is necessary to interpret the system and method of Thomas by the standards generally accepted in the art. When an initial attempt to establish a call fails – for example, a user attempting to connect to an ISP – subsequent attempts, at predetermined intervals, will be made to establish the call until the attempt's timeout (or "predetermined time"). Similarly, the disclosure illustrated above in Thomas shows that an attempt to establish a call with a particular gateway would be done by sending (and resending) the call setup request to that destination gateway until it is necessary to move on to the succeeding gateway.

(Ans. 13). For the reasons set forth in relation to claim 1, we understand the Examiner's invocation of "inherency" to be intended to mean that one of ordinary skill in the art would have inferred from Thomas that multiple attempts to contact a given destination gateway could be made before moving on to the next gateway on the priority list.

We find this position to be reasonable. The skilled artisan would find it to be mere common sense that if an attempt to call a party is unsuccessful, one can try dialing that phone number one or more additional times before giving up or trying a different number. *See KSR*, 550 U.S. at 421 (noting that a factfinder's recourse to common sense is permissible in making determinations of obviousness). Moreover, Appellants do not dispute whether one of ordinary skill in the art would reasonably infer such a possibility from the express teachings of Thomas.

IV.

The fourth issue before us is: Have Appellants shown that the Examiner's motivation to combine White and Thomas is based upon impermissible hindsight?

The obviousness rejection of claim 1, 2, 5-7, 15-17, 19, 20, and 22-28 states with respect to at least claim 1:

> It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of White by providing a prioritized list of eligible destination gateways for establishing a call between a source and a particular destination based on tracked status information of the destination gateways, as taught by Thomas, thus increasing the success rate of completing the call if the optimal destination gateway is unavailable and also enabling routing options based on availability and pricing.

(FF 1). Contrary to Appellants' assertion, then, the Examiner has provided more than a "mere[] . . . conclusory statement providing an alleged benefit of the combination" (*see* Br. 13). Rather, the Examiner has provided "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *See KSR*, 550 U.S. at 418 (citation omitted) (internal quotation marks omitted). As such, the burden of rebuttal has shifted to Appellants to overcome the prima facie case of obviousness with arguments and/or evidence. *See Oetiker*, 977 F.2d at 1445. Having provided no further arguments or evidence regarding the proffered motivation, Appellants have not rebutted the Examiner's prima facie showing of obviousness.

Appellants make arguments regarding independent method claim 19 and dependent claim 22 that are similar to those made with respect to claim 1 (*see* Br. 21-24). Claim 20 depends from claim 19 and, according to Appellants, further "recites features similar to claim 2" (Br. 24). Appellants likewise traverse the Examiner's rejection of claim 20 "[f]or reasons similar to those discussed [in the Brief] with respect to claim 2" (*id.*). Accordingly,

Appellants' arguments regarding claims 19, 20, and 22 are unpersuasive for the reasons set forth above in relation to claims 1 and 2.

Claims 23 and 26 both depend directly from claim 1. Claim 23 further recites "wherein the routing information identifies at least one destination gateway that can handle the call according to status information tracked by the redirect server." Claim 26 similarly recites "wherein the redirect server tracks status of at least one destination gateway." Appellants argue that the Examiner does not clearly indicate whether White or Thomas allegedly discloses these features, and therefore, the Examiner has not established a prima facie case for either claim (Br. 15-16).

Appellants' arguments are not persuasive. We understand the Examiner's position to be that White discloses an Internet address table ("redirect server"), that Thomas teaches updating a prioritized list of available destination gateways ("status information") based upon historical availability data, and that it would have been obvious to modify White's Internet address table so as to maintain or track this status information (*see* Ans. 3-6, 10-11). Accordingly, the Examiner has established a prima facie showing of obviousness for claims 23 and 26, and Appellants have not rebutted this showing.

For the foregoing reasons, we will sustain the Examiner's rejection of independent claim 1; dependent claims 2, 5-7, 15, and 23-26, which depend from claim 1; independent claim 19; and dependent claims 20 and 22, which depend from claim 19.

Claims 16, 27, and 28

V.

Independent claim 16 is directed to "[a] system for allowing a call to be completed in a communication session between a calling party and a called party" (claim 16). Appellants present arguments regarding these claims that are substantively similar to those arguments set forth in relation to claim 1: White's address table cannot be fairly construed as being equivalent to a redirect server (*see* Br. 17-18). These arguments regarding claims 16, 27, and 28 are not deemed persuasive for the same reasons set forth above in relation to claim 1.

Appellants additionally argue that clearinghouse 50 cannot read on the network management system because "Thomas do[es] not disclose or suggest that clearinghouse 50 receives and <u>stores status changes of destination gateways</u>, as required by claim 16" (Br. 19). This argument is not persuasive.

The Examiner has explained that Thomas's "prioritized list of eligible destination gateways may be created with regards to preference criteria" (Ans. 14). The Examiner further explains that "Thomas shows that the preference criteria includes 'historical availability' of the gateways in the network and, therefore, meets the limitation of receiving and storing 'status changes of destination gateways' as claimed" (Ans. 14 (citation omitted)). As such, the Examiner has established a prima facie showing of obviousness, shifting the burden of rebuttal to Appellants.

Appellants acknowledge that

Thomas further discloses that a routing engine 110 associated with clearinghouse 50 may use preference information to provide originating gateway 108 with a prioritized list of

terminating gateways 114a-c capable of terminating a call and
that the list may be prioritized according to preferences selected
by the customer (Thomas – col. 23, lines 21-36).

(Br. 19). Furthermore, Appellants do not dispute the Examiner's assertion

that the preference criteria include "historical availability." Nor do

Appellants dispute whether storing information regarding historical

availability of destination gateways is synonymous with storing status

changes of destination gateways. Accordingly, Appellants have not shown

that the Examiner erred in finding that Thomas teaches or suggests a

network management system for receiving and storing status changes of

destination gateways, said network management system being in

communication with an IP telephony proxy server. As such, Appellants

have not persuaded us of error in the Examiner's obviousness rejection of

representative claim 16. Accordingly, we will sustain the Examiner's

rejection of that claim and dependent claims 27 and 28, which fall with

claim 16.

Claim 17

VI.

The sixth issue before us is: Have Appellants shown that the

Examiner erred in finding that it would have been obvious to have

specifically used a SIP proxy server for White's gateway router 104?

The Examiner has taken Official Notice (*see* MPEP § 2144.03,

Reliance on Common Knowledge in the Art or "Well Known" Prior Art)

that it was common practice in the art to use SIP protocols for establishing

voice over IP calls between different domains (FF 2). The Examiner also set

forth a motivation for specifically using a SIP proxy server for White's

gateway router 104 (*id.*). As such, the Examiner has established a prima facie showing of obviousness, shifting the burden of rebuttal to Appellants.

Appellants have not traversed the Examiner's taking of Official Notice. *See* MPEP § 2144.03(C) (setting forth the procedure for Appellants to demand that the Examiner produce authority for noticed facts); *see also* Br. 20-21 (lacking any allegation that the Official Notice was traversed). Rather, Appellants solely argue "[c]learly, gateway router 104 is not a SIP proxy server and there is also no suggestion or motivation for modifying gateway router 104 into a SIP proxy server, absent impermissible hindsight" (Br. 20). Restated, Appellants only argue that which the Examiner has already admitted: that White does not disclose the gateway router 104 may specifically be a SIP proxy server. Moreover, Appellants do not provide any basis or rationale to their conclusion that the Examiner's motivation was a product of impermissible hindsight.

For the foregoing reasons, Appellants have not persuaded us of error in the Examiner's obviousness rejection of representative claim 17. We will therefore sustain the Examiner's rejection of claim 17.

Claims 3, 4, 8-10, 13, 14, and 21 – White in view of Thomas and Iwama

We will likewise sustain the Examiner's obviousness rejection of claims 3, 4, 8-10, 13, 14, and 21 over White in view of Thomas and Iwama. We find that Appellants have not particularly pointed out errors in the Examiner's reasoning to persuasively rebut the Examiner's prima facie case of obviousness, but merely reiterate the same arguments with respect to the alleged deficiencies of White and Thomas in connection with independent claim 1 (Br. 25). We are not persuaded by these arguments, however, for

the same reasons discussed above. The rejection of these claims is therefore sustained.

Claim 18

VII.

The seventh issue before us is: Have Appellants shown that the Examiner erred in finding that Iwama discloses an H.323 gatekeeper? Appellants do not assert that Iwama fails to disclose an H.323 gatekeeper. Rather, Appellants only assert that the Examiner did not establish a prima facie case of obviousness because the Examiner "does not point to any portion of Iwama for support for this feature" (Br. 26).

We observe that the Examiner did not cite to a specific column or line in support of the position that Iwama discloses an H.323 gatekeeper. However, we understand from the Examiner's omission of a single citation that the Examiner's position is that the entirety of Iwama is primarily directed towards an Internet telephone using a gateway device based on the procedure of H.323 (*see* FF 3). As such, Appellants have not persuaded us that the Examiner erred in finding that Iwama discloses an H.323 gatekeeper.

Appellants also argue that Iwama's disclosure "is not equivalent to the feature recited in claim 18. That is, gatekeeper 101 of Iwama is not an IP telephony proxy server that selects one of a plurality of egress gateways for completing a call, as required by claim 18" (Br. 26). However, this argument, directed towards the teachings of Iwama alone, does not address the propriety of the Examiner's rejection, as the rejection is based upon the combination of White, Thomas, and Iwama.

Appellants also "assert that the motivation to combine these three references does not satisfy the requirements of 35 U.S.C. § 103 for the reasons discussed [in the Appeal Brief] with respect to claims 3, 4, 8-10, 13, 14 and 21" (Br. 26). However, this argument regarding improper motivation is not deemed persuasive for the reasons we set forth in relation to those claims and claim 1.

For the foregoing reasons, Appellants have not persuaded us of error in the Examiner's obviousness rejection of claim 18. Accordingly, we will sustain the Examiner's rejection of claim 18.

CONCLUSIONS OF LAW

I.   Appellants have not shown that the Examiner erred in interpreting the claimed redirect server as reading on White's Internet address database.

II.   Appellants have not shown that the Examiner erred in interpreting the claimed step of "forwarding the received call setup request to the redirect server" as reading on a gateway router querying an address database to obtain an Internet address for a destination gateway.

III.   Appellants have not shown that the Examiner erred in finding that Thomas teaches or suggests that, if a response from a selected destination gateway is not received within a predetermined time, the proxy server sends a call setup request to a succeeding destination gateway selected from routing information received from a redirect server, as required by claim 1.

IV.   Appellants have not shown that the Examiner's motivation to combine the prior art is based upon impermissible hindsight.

V.   Appellants have not shown that the Examiner erred in finding that Thomas teaches or suggests a network management system for receiving and

storing status changes of destination gateways, said network management
system being in communication with an IP telephony proxy server.

VI.   Appellants have not shown that the Examiner erred in finding that it
would have been obvious to have specifically used a SIP proxy server for
White's gateway router 104.

VII.   Appellants have not shown that the Examiner erred in finding that
Iwama discloses an H.323 gatekeeper.

Accordingly, Appellants have not shown that the Examiner erred in
rejecting claims 1-10 and 13-28 under 35 U.S.C. § 103.

DECISION

We sustain the Examiner's rejections with respect to all pending
claims on appeal. Therefore, the Examiner's decision rejecting claims 1-10
and 13-28 is affirmed.

No time period for taking any subsequent action in connection with
this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R.
§ 1.136(a)(1)(iv).

AFFIRMED

babc

VERIZON
PATENT MANAGEMENT GROUP
1320 North Court House Road
9th Floor
ARLINGTON, VA 22201-2909